

MINUTES

**SUPREME COURT’S ADVISORY COMMITTEE ON THE
MODEL UTAH JURY INSTRUCTIONS – CRIMINAL**

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Wednesday, March 4, 2015
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge James Blanch, Chair
Alison Adams-Perlac, Staff
Professor Jensie Anderson
Sandi Johnson
Linda Jones
Karen Klucznik
Judge Brendan McCullagh
Judge Michael Westfall (remotely via
Vidyo)

EXCUSED

Jennifer Andrus
Mark Field
Jesse Nix
Thomas Pedersen, Intern
Scott Young

1. Welcome, Approval of Minutes

Judge Blanch

Judge Blanch welcomed everyone to the meeting. He thanked Professor Anderson for her years of service on the committee and presented her with a certificate. The committee expressed appreciation to Professor Anderson for her contribution.

Ms. Jones stated that she appeared in person at the last meeting.

*Ms. Johnson moved to approve the minutes from the February 4 meeting as amended.
Ms. Klucznik seconded the motion and it passed unanimously.*

2. Instructions with Skin Modifications

Sandi Johnson

Judge Blanch stated that Ms. Johnson offered to look into previously approved sexual offense elements instructions to see which ones needed to address skin. He turned the time over to her.

Ms. Jones said she looked at touching under the clothing or through the clothing and sexual intercourse. She recommended keeping the definition of sexual intercourse (touching is sufficient to constitute sexual intercourse), since there is not a good way to

add it to the elements instructions. She said it only applies in about 3 statutes. Where there is sexual intercourse, she recommended putting it in a committee note to see Instruction 1621. Ms. Adams-Perlac stated that 1621 was approved. Ms. Johnson said that sexual intercourse would be the only definitional instruction needed regarding touching or penetration.

The committee reviewed the instructions addressing touching and sexual intercourse. The committee discussed Instruction 1603 Sexual Abuse of a Minor and decided that the following language best reflects that there must be skin to skin contact:

CR1603 Sexual Abuse of a Minor.

(DEFENDANT'S NAME) is charged [in Count __] with committing Sexual Abuse of a Minor [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
 - a. [touched the skin of (MINOR'S INITIALS)'s anus, buttocks, or any part of ~~the (his)(her) genitals of (MINOR'S INITIALS)~~]; or
 - b. [touched the skin of breast of (FEMALE MINOR'S INITIALS)'s ~~breast, a female~~]; or
 - c. [otherwise took indecent liberties with (MINOR'S INITIALS)]; or
 - d. [caused (MINOR'S INITIALS) to take indecent liberties with any person];
3. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person];
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct; and
5. (DEFENDANT'S NAME) was seven or more years older than (MINOR'S INITIALS).

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

- Utah Code § 76-5-401.1.
- Utah Code § 76-5-407.

Committee Note

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

The committee reviewed Instruction 1603 Sexual Abuse of a Minor. Ms. Klucznik moved to approved 1603 as amended. Ms. Jones suggested adding 76-5-407 to the references. The motion was seconded by Ms. Johnson and it passed unanimously.

The committee discussed Instruction 1604 Unlawful Sexual Activity with a Minor and decided that the following language best reflects that there must be skin to skin contact:

CR1604 Unlawful Sexual Activity with a Minor.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Unlawful Sexual Activity with a Minor [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt all of the elements in one or more of the following variations:

VARIATION A:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly had sexual intercourse;
3. With (MINOR'S INITIALS); and
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

[OR]

VARIATION B:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly engaged in any sexual act with (MINOR'S INITIALS);
3. The sexual act involved touching, however slight, of the genitals of one person with the mouth or anus of another;
4. the touching of (MINOR'S INITIALS)'s genitals, mouth or anus involved (MINOR'S INITIALS)'s skin; and
3. ~~touching the skin of (MINOR VICTIM'S INITIALS)'s, however slight,~~
~~of~~
- 4.5. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

[OR]

VARIATION C:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly caused the penetration, however slight, of the genital or anal opening of (MINOR'S INITIALS)

- by any foreign object, substance, instrument, or device, including a part of the human body;
3. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person]; and
 4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element [of one or more of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element [of at least one of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-401.

Utah Code § 76-5-407.

Committee Notes

Variation A should be used with Instruction 1621A, Conduct Sufficient to Constitute Sexual Intercourse for Unlawful Sexual Activity with a Minor, Unlawful Sexual Conduct with a 16 or 17 Year Old, or Rape.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Ms. Jones moved to approve Instruction 1604 Unlawful Sexual Activity with a Minor as amended with a reference to Utah Code section 76-5-407. Judge McCullagh seconded the motion and it passed unanimously.

The committee discussed Instruction 1605 Unlawful Sexual Activity with a Minor and decided that the following language best reflects that there must be skin to skin contact:

CR 1605 Unlawful Sexual Conduct with a 16 or 17 year old.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Unlawful Sexual Conduct with a 16 or 17 year old [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
 - a. [had sexual intercourse with (MINOR'S INITIALS)]; or

- b. [engaged in any sexual act with (MINOR'S INITIALS) involving:
 - i. the touching, however slight, of the genitals of one person with the mouth or anus of another; and
 - ~~i.~~ii. the touching of (MINOR'S INITIALS)'s genitals, mouth or anus involved (MINOR'S INITIALS)'s skin;] or
 - ~~b.~~c. [caused the penetration, however slight, of the genital or anal opening of (MINOR'S INITIALS) by any foreign object, substance, instrument, or device, including a part of the human body;
 - i. [with the intent to arouse or gratify the sexual desire of any person]; or
 - ii. [with the intent to cause substantial emotional or bodily pain to any person]]; or
 - ~~c.~~d. [touched the skin of (MINOR'S INITIALS)'s anus, buttocks, or any part of (his)(her)(MINOR'S INITIALS)'s genitals or touched the skin of (FEMALE MINOR'S INITIALS)'s breast, or otherwise took indecent liberties with (MINOR'S INITIALS), or caused (MINOR'S INITIALS) to take indecent liberties with the defendant or another person;
 - i. [with the intent to arouse or gratify the sexual desire of any person]; or
 - ii. [with the intent to cause substantial emotional or bodily pain to any person]]].
3. At the time of the conduct, (MINOR'S INITIALS) was 16 or 17 years old; and
 4. At the time of the conduct, (DEFENDANT'S NAME) was:
 - a. [seven or more but less than ten years older than (MINOR'S INITIALS), -and (DEFENDANT'S NAME) knew or reasonably should have known (MINOR'S INITIALS)'s age]; or
 - b. [ten or more years older than (MINOR'S INITIALS)].

After you carefully consider all the evidence in this case, if you are convinced that each and every element [of one or more of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element [of at least one of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

- Utah Code § 76-5-401.2.
- Utah Code § 76-5-407.

Committee Notes

If the State intends to rely on Subsection 2d in combination with 2a, 2b, or 2c, use the Unlawful Sexual Conduct with a 16 or 17 year old special verdict form.

Variation A should be used with Instruction 1621A, Conduct Sufficient to Constitute Sexual Intercourse for Unlawful Sexual Activity with a Minor, Unlawful Sexual Conduct with a 16 or 17 Year Old, or Rape.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Ms. Jones moved to approve Instruction 1605 Unlawful Sexual Conduct with a 16 or 17 year old as amended with a reference to Utah Code section 76-5-407. Judge McCullagh seconded the motion and it passed unanimously.

The remaining instructions with skin modifications were tabled for consideration at the next meeting.

3. Consent Instructions

Committee

The consent instructions were tabled for consideration at the next meeting.

4. Adjourn

Committee

The meeting was adjourned at 1:00 p.m. The next meeting is Wednesday, April 1, 2015.